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Data centers as strategic infrastructures: the new authorization framework

Recognition of data centers within the national infrastructure system. Summary and assessment of the regulatory measure

The introduction of Article 8 of Decree-Law No. 21 of 20 February 2026 (hereinafter the "Energy Bills Decree"), which entered into force on 21 February 2026, represents an encouraging signal for the entire data center sector, as it formally recognizes for the first time their role as strategic infrastructures for the country's development and competitiveness.

This regulatory measure fills a gap which, particularly from an urban planning and building perspective, had until now left the authorization of data center projects to the discretionary assessment of individual municipalities involved in the development. The Energy Bills Decree introduces a comprehensive framework governing the integration of data centers into the electricity system, clearly defining a single authorization procedure.

The single procedure: structure and timing

Article 8 of the Energy Bills Decree establishes a single procedure for granting the authorizations required for the construction or expansion of corporate, colocation, and co-hosting data centers, as well as their related user connection networks, at any voltage level.

Authorization is granted by the authority competent to issue the integrated environmental authorization - namely, the Ministry of the Environment and Energy Security or the relevant Region, depending on the case - following the "conference of services" procedure under Article 14-*bis* and subsequent provisions of Law No. 241/1990.

As for timing, pursuant to paragraph 1 of Article 8, the duration of the authorization process may not exceed 10 months from the completion of the documentation completeness check, extendable by a further 3 months only in exceptional circumstances, depending on the nature, complexity, location, or scope of the project.

Types of data centers covered by the regulation

The regulation applies to the following categories of data centers, as defined by Commission Delegated Regulation (EU) 2024/1364 of 14 March 2024:

- Corporate data centers (Article 2(1)): facilities operated by a company whose sole purpose is to meet and manage the company's own information technology needs;
- Colocation data centers (Article 2(2)): facilities where one or more clients install and manage their own networks, servers, and information storage equipment and services;
- Co-hosting data centers (Article 2(3)): facilities where one or more clients access networks, servers, and storage equipment used for their services and applications, and where the data center operator provides both IT equipment and the supporting infrastructure within

the building as a service.

Environmental aspects: EIA and screening

The single procedure also incorporates environmental impact assessment procedures. In particular:

- for projects subject to a full Environmental Impact Assessment (EIA) - for example, those classified as "thermal installations for the production of electricity, steam and hot water with a total thermal capacity exceeding 150 MW" (Annex II, Part Two, Environmental Code) - the procedure is carried out directly within the single procedure, with timelines reduced by half compared to the standard deadlines set out in Articles 24 and 25 of the Environmental Code.
- for projects subject to screening (so-called EIA screening) - such as installations with a total thermal capacity exceeding 50 MW (Annex II-bis, Part Two, Environmental Code) - if the screening concludes that an EIA is required, the application must be submitted within 90 days, a strict deadline under penalty of dismissal of the procedure.

The "Guidelines for environmental assessment procedures of data centers" (Director's Decree No. 257 of 2 August 2024) remain applicable, providing operational instructions and identifying the relevant project categories for EIA procedures.

Documentation required for the application

The authorization application must include all documentation required under sector-specific regulations for the issuance of the various authorizations applicable based on the type and technical characteristics of the project and/or the area concerned. These include:

- landscape and cultural heritage authorizations;
- environmental impact decisions (including public notice pursuant to Article 24(2) of the Environmental Code);
- permits for water use and atmospheric emissions.

Organizational aspects: the competent authority

The authority responsible for issuing the authorization is identified pursuant to Article 7 of Legislative Decree No. 152/2006 (Environmental Code). Depending on the case, this may be the Ministry of the Environment and Energy Security or the relevant Region.

Article 8 specifies that where the competent authority is designated by regional or provincial laws, this function may not be delegated to sub-provincial bodies.

The procedure consists of the conference of services under Article 14-*bis* et seq. of Law No. 241/1990, involving all competent administrations, including those responsible for environmental, landscape, cultural protection, and public safety.

For projects declared of national strategic interest pursuant to Article 13 of Decree-Law No. 104/2023, the single authorization follows the special procedure provided therein, chaired by an Extraordinary Government Commissioner.

Transitional regime: application of the "tempus regit actum" principle

In the absence of a specific transitional provision in Article 8, the principle of *tempus regit actum* applies, requiring administrations to align their actions with the legal rules in force at the time they are carried out, both in terms of procedural requirements and substantive content.

This principle suggests that the new regulatory provisions may also apply to procedures already underway, including EIA processes. It will be crucial to observe how the competent authorities implement Article 8 in pending and future procedures.

This is one of the aspects that may require implementing clarification through guidelines, a tool consistent with established industry practice.

Critical issues and prospects for improvement

- Despite the commendable aim of accelerating procedures, some practical issues emerge that may require adjustments during the law conversion process:
- **Deferred starting point**: the overall timeframe begins only after the completion of the documentation completeness check, a phase which in practice may last several months;

- **Uncertain transitional regime**: Article 8 does not regulate how the new procedure applies to pending proceedings, leaving room for interpretative uncertainty.

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